

## Calendar No. 1092

110TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
110-509

### WATER INFRASTRUCTURE FINANCING ACT OF 2008

SEPTEMBER 26 (legislative day, SEPTEMBER 17), 2008.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

### R E P O R T

together with

### ADDITIONAL VIEWS

[Including an estimate by the Congressional Budget Office]

The Committee on Environment and Public Works considered an original bill to amend the Federal Water Pollution Control Act and the Safe Drinking Water Act to improve water and wastewater infrastructure in the United States, and reports favorably thereon and recommends that the bill, as amended, do pass.

### PURPOSES OF THE LEGISLATION

The Water Infrastructure Financing Act of 2008 would reauthorize the Clean Water Act State Revolving Fund and the Safe Drinking Water Act State Revolving Fund to improve wastewater and drinking water infrastructure in America. It also makes improvements to these and related programs.

### GENERAL STATEMENT AND BACKGROUND

The nationwide need for investment in water and wastewater infrastructure through the State Revolving Funds continues to far outpace the amount of funding that is available on all levels of government. The EPA estimates that the capital investment shortfall for wastewater infrastructure ranges from \$73 billion to \$177 billion over 20 years.

A 2000 EPA report, entitled *Progress in Water Quality*, states that “without continued improvements in wastewater treatment infrastructure, future population growth will erode away many of the

Clean Water Act achievements in effluent loading reduction.” EPA projects that given the expansion of the U.S. population forecast over the next 20 years, even with expected increases in wastewater treatment efficiencies, by 2016, wastewater treatment plants, nationwide, may discharge pollutants into U.S. waters at levels similar to those that existed in the mid-1970s, only a few years removed from the enactment of the Clean Water Act.

This legislation would authorize \$19.6 billion in appropriations from 2008 through 2012 for the EPA to give capitalization grants for the Clean Water State Revolving Fund (SRF) program. The bill would authorize appropriations of \$14.7 billion over the 2008–2012 period for the EPA to provide grants within the Safe Drinking Water Act SRF program. Grants within the SRF programs are used to help States in making low-interest loans to local communities to build wastewater treatment facilities to treat wastewater and drinking water. The bill also makes programmatic changes to the SRFs and establishes and improves other related grant and technical assistance programs.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title; table of contents*

This section provides that the Act may be cited as the “Water Infrastructure Financing Act”.

#### TITLE I—WATER POLLUTION INFRASTRUCTURE

##### *Section 101. Technical assistance for rural small treatment works and medium treatment works*

This section would authorize the Administrator of the Environmental Protection Agency to make grants on a competitive basis to nonprofit organizations that are qualified to provide technical assistance on wastewater and stormwater approaches to owners and operators of small and medium treatment works.

This section would authorize annual appropriations for each of fiscal years 2009–2013 of \$25,000,000 for grants for small treatment works and \$15,000,000 for grants for medium treatment works.

##### *Section 102. Projects eligible for assistance*

This section describes the projects eligible for assistance from the State Water Pollution Control Revolving Loan Fund.

##### *Section 103. Affordability*

This section would amend section 603 of the Clean Water Act (33 U.S.C. 1383) to make the program more affordable to States and municipalities, including by extending the terms of loans made under section 603 of the Clean Water Act to the lesser of 30 years or the design life of the project; increasing the State’s allowable administrative costs to 6 percent; providing additional assistance to disadvantaged communities with loan subsidies, including loan forgiveness and negative interest rates, up to 30 percent of the capitalization grant received by the State in a fiscal year.

This section would authorize a State to forgive repayment of up to 5 percent of loans for the percentage of a project that treats or minimizes sewage or urban stormwater discharges using: decen-

tralized stormwater or wastewater controls; low-impact development technologies; stream buffers; wetland restoration and enhancement; actions to minimize impervious surfaces; use of vegetation and other permeable materials; and actions to increase efficient water use, conservation, and reuse.

*Section 104. Water Pollution Control Revolving Fund*

This section would establish a priority system for each State in implementing the State Water Pollution Control Revolving Loan Fund, including giving greater weight to an application that proposes approaches other than the traditional waste water approach (which consists of collection sewers, centralized treatment works, and a direct point source discharge to surface water) using decentralized stormwater or wastewater controls; low-impact development technologies; stream buffers; wetland restoration and enhancement; actions to minimize impervious surfaces; use of vegetation and other permeable materials; and actions to increase efficient water use, conservation, and reuse.

*Section 105. Transferability of funds*

This section would authorize the Governor of a State to reserve up to 33 percent of a capitalization grant under title II of the Clean Water Act and add those funds to funds provided to the State under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12), and to reserve up to that amount from capitalization grants made under section 1452 of the Safe Drinking Water Act and add those funds to any funds the State received under title II of the Clean Water Act. The reserved funds would not be considered for purposes of the State's matching funds for a capitalization grant under title II of the Clean Water Act.

*Section 106. Noncompliance*

This section would generally prohibit assistance (other than for purposes of planning, design, or security) to an owner or operator of a treatment works that has been in significant noncompliance with the Clean Water Act, unless the Administrator and the State determines that the enforcement agency has determined that the assistance will enable the owner to take corrective action or would assist the owner in making progress toward compliance.

*Section 107. Negotiation of contracts*

This section would require that certain contracts to be carried out with funds directly made available by a capitalization grant be negotiated in the same manner as a contract for architectural and engineering services under chapter 11 of title 40, United States Code, or equivalent State qualifications-based requirement. Small communities of 10,000 or fewer would be exempted from this requirement.

*Section 108. Allotment of funds*

This section would allow each State to reserve the greater of 2 percent or \$100,000 from its fiscal year allotment to carry out planning under sections 205(j) and 303(e) of the Clean Water Act, and requires 1.5 percent of those funds be allocated to Indian Tribes.

*Section 109. Authorization of appropriations*

This section would authorize appropriations of \$16.8 billion over 5 years for the capitalization of state revolving funds as follows: \$3.2 billion in each of fiscal years 2008 and 2009, \$3.6 billion in fiscal year 2010, \$4 billion in fiscal year 2011, and \$6 billion in fiscal year 2012. Section 109 would authorize the Administrator to reserve not more than \$100,000 of the amounts made available in each fiscal year to conduct needs surveys.

*Section 110. Sewer overflow control grants*

This section would authorize the Administrator to make grants for fiscal years 2008–2012 to prevent sewer overflows. Projects that receive grants under this section would be subject to the same requirements as a project that receives assistance from a State water pollution control revolving fund.

This section would authorize appropriations of \$2 billion over 5 years for sewer overflow control grants as follows: \$375 million for each of fiscal years 2008–2011, and \$500 million for fiscal year 2012. For each of fiscal years 2008 and 2009, the Administrator is required to use the priority criteria in section 221(b) (33 U.S.C. 1301(b)), with additional priority given to projects that use non-structural, low-impact development, water conservation, efficiency or reuse, or other decentralized stormwater or wastewater approaches. Starting in fiscal year 2010, the Administrator would be required to provide sewer overflow control grants in accordance with the needs survey required conducted under section 210 (33 U.S.C. 1290).

*Section 111. Capitalization grant agreements*

This section would provide that treatment works constructed, in whole or in part, using State loan funds must meet the requirements of section 513 of the Clean Water Act (33 U.S.C. 1372) relating to labor standards.

*Section 112. Critical water infrastructure projects*

This section would require the Administrator to establish a watershed restoration grant program to protect or improve water quality. Section 112 would authorize the Administrator to enter into agreements with one or more non-Federal entities to carry watershed restoration projects, which may include projects that are included in a State's intended use plan developed under section 606(c) of the Clean Water Act (33 U.S.C. 1386(c)). The non-Federal entities would be required to pay 45 percent of the total project costs, which may include in-kind contributions. The Administrator may waive the cost-sharing requirement based on financial hardship.

This section would authorize appropriations of \$50 million for each fiscal year 2008 through 2012.

TITLE II—SAFE DRINKING WATER INFRASTRUCTURE

*Section 201. Contaminant prevention, detection, and response*

This section would require the Administrator to submit a report to Congress, within 180 days of enactment, concerning progress in implementing section 1434 of the Safe Drinking Water Act (42

U.S.C. 300i–3). Section 201 would also require the Administrator to develop and carry out an implementation plan for section 1434, incorporating results of the report.

*Section 202. Drinking water technical assistance for communities*

This section would reauthorize and amend the form of assistance, priorities, and other requirements for technical assistance under section 1442(e) of the Safe Drinking Water Act. This section would allow for well system nonprofit technical assistance to be included under section 1442(e) of the Safe Drinking Water Act.

*Section 203. Preservation of employee labor standards*

This section would require that contractors financed, in whole or in part, with financial assistance provided under the Safe Drinking Water Act, including State loan funds under section 1452, pay workers the prevailing wage.

*Section 204. Preconstruction work*

This section would amend section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2)) to allow the use of State loan funds for replacing or rehabilitating aging treatment, storage, or distribution facilities or to upgrade security of public water systems. Section 204 also allows the use of loan funds for payment of certain costs of general obligation bonds issued by the State to provide matching funds.

*Section 205. Priority system requirements*

This section would establish a priority system to be used for funding projects that addresses the most serious risks to human health, are necessary to ensure compliance with the Act, and assist the public water systems in the most need.

*Section 206. Affordability*

This section would amend section 1452(d)(3) of the Safe Drinking Water Act (42 U.S.C. 300j–12(d)(3)) to expand the definition of a “disadvantaged community” to include a portion of a service area.

*Section 207. Safe drinking water revolving loan funds*

This section would authorize a State to reserve up to 33 percent of the capitalization grant made under section 1452(g) of the Safe Drinking Water Act (42 U.S.C. 300j–12(g)) and transfer those funds to any funds provided the State under section 601 of the Clean Water Act (33 U.S.C. 1381), and to reserve up to that amount from capitalization grants made under section 601 of the Clean Water Act and add those funds to any funds the State received under section 1452(g) of the Safe Drinking Water Act. The reserved funds would not be considered for purposes of the State’s matching funds for a capitalization grant under 602(b) of the Clean Water Act.

Section 207 also would make certain technical corrections to section 1452(g) of the Safe Drinking Water Act.

*Section 208. Other authorized activities*

This section authorizes the use of capitalization grant funds to implement source water protection plans.

*Section 209. Authorization of appropriations*

Section 208 would authorize appropriations of \$13 billion over 5 years for the capitalization of state revolving funds as follows: \$1.5 billion in fiscal years 2008, \$2 billion in each of fiscal years 2009 and 2010, \$3.5 billion in fiscal year 2011, and \$6 billion in fiscal year 2012. Section 209 would authorize the Administrator to reserve not more than \$100,000 of the amounts made available in each fiscal year to conduct needs surveys.

*Section 210. Negotiation of contracts*

Section 209 would require that certain contracts to be carried out with funds directly made available by a capitalization grant under Section 1452 of the Safe Drinking Water Act be negotiated in the same manner as a contract for architectural and engineering services under chapter 11 of title 40, United States Code, or equivalent State qualifications-based requirement. Small communities of 10,000 or fewer would be exempted from this requirement.

*Section 211. Critical drinking water infrastructure projects*

This section requires the Administrator to establish a grant program to eligible entities for use in carrying out project and activities to assist community water systems in meeting the requirements of the Safe Drinking Water Act. The section authorizes \$300 million for each of fiscal years 2008 through 2012.

*Section 212. District of Columbia lead service line replacement*

This section authorizes \$30 million to carry out lead service line replacement in the District of Columbia and establishes certain conditions and limitations of lead service line replacement.

TITLE III—MISCELLANEOUS

*Section 301. Definitions*

This section defines certain terms within this title.

*Section 302. Program for water quality enhancement and management*

This section requires the Administrator to establish a program for water quality enhancement and management within the EPA. It also requires the Administrator to establish a nationwide demonstration grant program on innovative and nontraditional water technologies. It authorizes \$20 million for fiscal years 2008–2012.

*Section 303. Agricultural Pollution Control Technology Grant Program*

This section requires the Administrator to provide capitalization grants of no more than \$1 million per State to establish an agricultural pollution control technology State revolving fund. The section establishes state eligibility requirements and other conditions. The section authorizes \$50 million in appropriations to carry out this section.

*Section 304. State revolving fund review process*

This section requires the Administrator to consult with States, utilities, nonprofit organizations, and other Federal agencies pro-

viding financial assistance to identify ways to expedite and improve the application and review process, for the provision of assistance from the Clean Water Act and Safe Drinking Water Act State Revolving Funds. It also requires the Administrator to take administrative action necessary to expedite and improve the process, and collect information relating to innovative approaches taken by any State to simplify the application process.

*Section 305. Cost of service study*

This section requires the Administrator to enter into an agreement with the National Academy of Sciences to conduct a study regarding public water systems and treatment works and the costs associated with operations, maintenance, capital replacement, and regulatory requirements.

*Section 306. Water management study*

This section requires the Administrator to enter into an agreement with the National Academy of Sciences to conduct a study looking at innovative, effective, and systematic approaches for the management of water supply, wastewater, and stormwater in urban areas and surrounding communities throughout the United States and other countries.

*Section 307. Reduction in authorization of appropriations*

This section requires that each amount authorized to be appropriated under this Act will be reduced by 2 percent.

#### LEGISLATIVE HISTORY

The Water Infrastructure Investment Act was an original bill sponsored by Senator Lautenberg, drafted in cooperation with Senators Boxer, Inhofe, and Vitter. On September 17, 2008 the Committee on Environment and Public Works held a Business Meeting, at which Senator Lautenberg offered an amendment making certain technical changes to the bill, and the amendment was agreed to by voice vote. Senator Lautenberg also offered an amendment applying Davis-Bacon prevailing wage requirements to contract negotiations under these programs—that amendment was passed by a roll call vote, 11 ayes, 7 nays, and 1 Not Recorded. Senator Inhofe also offered an amendment requiring that each amount authorized to be appropriated under this Act shall be reduced by 2 percent. That amendment passed by voice vote. S. 3500 was ordered favorably reported as amended by voice vote.

#### ROLLCALL VOTES

There was one rollcall vote during the consideration of the Water Infrastructure Financing Act of 2008. Senator Lautenberg's Amendment #1, which would apply Davis-Bacon prevailing wage requirements to contract negotiations under the SRF programs was approved with 11 ayes, 7 nays, and 1 Not Recorded vote.

#### REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes evaluation of the regulatory impact of the reported bill. The Committee finds that this

legislation, which provides grants and financial assistance to communities, wastewater and drinking water utilities, certain technical assistance providers and others, does not have substantial regulatory impacts.

#### MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Committee finds that this legislation does not impose intergovernmental mandates or private sector mandates as those terms are defined in UMRA. The Congressional Budget Office concurs, finding “This legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.”

#### *Water Infrastructure Financing Act*

Summary: This bill would authorize the appropriation of \$33 billion for the Environmental Protection Agency (EPA) to provide grants to states and nonprofit organizations to support a wide range of water quality projects and programs. CBO estimates that implementing this legislation would cost about \$19 billion over the next five years and an additional \$14 billion after 2013, assuming appropriation of the authorized amounts.

The Joint Committee on Taxation (JCT) estimates that enacting the bill would reduce revenues by \$1.3 billion over the next 10 years. Enacting the bill would not affect direct spending.

This legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of this legislation is summarized in Table 1. The costs of this legislation fall within budget function 300 (natural resources and environment).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF THE WATER INFRASTRUCTURE FINANCING ACT

By fiscal year, in millions of dollars—												
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2009– 2013	2009– 2018
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Authoriza- tion Level ....	5,994	6,337	8,198	12,730	81	0	0	0	0	0	33,340	33,340
Estimated Outlays	564	1,977	3,746	5,597	6,912	6,098	3,681	1,740	829	370	18,796	31,514
CHANGES IN REVENUES												
Estimated Reve- nues <sup>1</sup> ..	*	–4	–15	–42	–87	–147	–209	–253	–278	–289	–148	–1,324

NOTE: \* = revenue of less than \$500,000.

<sup>1</sup> Estimate provided by the Joint Committee on Taxation.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the beginning of 2009, that the full amounts authorized will be appropriated for each year, and that outlays will



follow the historical patterns of spending for existing and similar programs. Components of the estimated costs are described below.

*Spending subject to appropriation*

This legislation would authorize appropriations totaling about \$33 billion over the next five years for EPA's water infrastructure and grant programs. Amounts authorized to be appropriated for individual programs are shown in Table 2.

The bill would authorize the appropriation of nearly \$30 billion over the 2009–2012 period for EPA to provide capitalization grants for the State Revolving Fund (SRF) program (about \$16 billion for the clean water SRF program and about \$13 billion for the safe drinking water SRF program). In 2008, the combined appropriation for these SRF programs was about \$1.5 billion. States would use such grants along with their own funds to make low-interest loans to communities for wastewater treatment and drinking water facilities. Indian tribes would use such grants to construct wastewater treatment facilities and to fund projects that would improve the quality of drinking water. This bill would make several revisions to those grant programs, including expanding the types of projects eligible for assistance, changing the formulas used to allocate grant money among the states and tribes, and extending the repayment terms for loans made by states.

Table 2.—AMOUNTS AUTHORIZED TO BE APPROPRIATED FOR EPA PROGRAMS UNDER THE WATER INFRASTRUCTURE FINANCING ACT

	By fiscal year, in millions of dollars—					
	2009	2010	2011	2012	2013	2009–2013
Clean Water SRF Grants .....	3,136	3,528	3,920	5,880	0	16,464
Safe Drinking Water SRF Grants .....	1,960	1,960	3,430	5,880	0	13,230
Sewer Overflow Grants .....	368	368	368	490	0	1,594
Critical Drinking Water Infrastructure Grant Program .....	294	294	294	294	0	1,176
Critical Water Infrastructure Grant Program .....	49	49	49	49	0	196
Grants for Lead Service Line Replacement in the District of Columbia .....	29	29	29	29	0	116
Technical Assistance for Nonprofits .....	42	42	42	42	42	210
EPA Safe Drinking Water Implementation Plan .....	7	7	7	7	0	28
Technical Assistance for Small and Medium Treatment Works .....	39	39	39	39	39	195
Agricultural Pollution Control Technology Grant Program .....	49	0	0	0	0	49
Grants for Water Quality Enhancement and Management .....	20	20	20	20	0	80
National Academy of Sciences Studies .....	1	1	0	0	0	2
<b>Total Authorization Level .....</b>	<b>5,994</b>	<b>6,337</b>	<b>8,198</b>	<b>12,730</b>	<b>81</b>	<b>33,340</b>

NOTE: SRF = state revolving fund; EPA = Environmental Protection Agency.

This legislation also would authorize the appropriation of about \$1.6 billion over the 2009–2012 period for EPA to make grants to states to remedy sewage overflows (that is, the discharge of untreated wastewater into waterways). This bill also would authorize the appropriation of about \$1.2 billion for the Critical Drinking Water Infrastructure Grant Program and about \$200 million for the Critical Water Infrastructure Grant Program over the same period. These grant programs would allow EPA to make grants to small public water systems to address the cost of complying with drinking water regulations and to make grants to entities to carry out projects related to watershed restoration.

All of the remaining authorizations in the bill would total about \$680 million over the next five years. That funding would be used for various other purposes, including a grant program to assist small and medium treatment works in a broad range of approaches to wastewater and stormwater management, grant programs aimed at promoting innovations in technology and alternative approaches to water quality management, and a grant program to address the replacement of lead drinking water service lines in the District of Columbia.

#### *Revenues*

This bill would authorize the appropriation of funds for EPA's clean water SRF and the safe drinking water SRF programs, as well as appropriations for the agricultural pollution control technology grant program. The JCT expects that some of those funds would be used by states to leverage additional funds by issuing tax-exempt bonds. The JCT estimates that the consequent reductions in revenue from issuing additional tax-exempt bonds would total about \$1.3 billion over the next 10 years.

**Intergovernmental and private-sector impact:** This legislation contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The bill would benefit state, local, and tribal governments by authorizing grants for water and sewer projects.

Estimate prepared by: Federal Spending: Susanne S. Mehlman. Federal Revenues: Mark Booth. Impact on State, Local, and Tribal Governments: Burke Doherty. Impact on the Private Sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

#### ADDITIONAL VIEWS

The integration of Davis-Bacon with the SRF program is antithetical to its purpose of lowering the costs incurred by state and local governments for constructing facilities to clean up water. Davis-Bacon has consistently inflated the cost of public construction projects anywhere from 5 percent to 38 percent over what they would be if they were to be bid upon competitively in the private sector. As a former Mayor, I am sensitive to the budgetary concerns of state and local governments especially during such lean economic times. This country faces tens of billions of dollars in infrastructure needs, and the inclusion of Davis-Bacon will certainly delay and potentially prohibit infrastructure construction and compliance progress. I regret that this provision will ultimately lead to a legislative impasse and that communities in need won't receive the resources this bill could provide.

JAMES M. INHOFE.

## CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

\* \* \* \* \*

## TITLE II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

### PURPOSE

SEC. 201. (a) \* \* \*

\* \* \* \* \*

### SEC. 221. SEWER OVERFLOW CONTROL GRANTS.

[(a) IN GENERAL.—In any fiscal year in which the Administrator has available for obligation at least \$1,350,000,000 for the purposes of section 601—

[(1) the Administrator may make grants to States for the purpose of providing grants to a municipality or municipal entity for planning, design, and construction of treatment works to intercept, transport, control, or treat municipal combined sewer overflows and sanitary sewer overflows; and

[(2) subject to subsection (g), the Administrator may]

(a) *IN GENERAL.—The Administrator may—*

*(1) make grants to States for the purpose of providing grants to a municipality or municipal entity for planning, design, and construction of treatment works to intercept, transport, control, or treat municipal combined sewer overflows and sanitary sewer overflows; and*

*(2) subject to subsection (g), make a direct grant to a municipality or municipal entity for the purposes described in paragraph (1).*

\* \* \* \* \*

(d) **COST-SHARING.**—The Federal share of the cost of activities carried out using amounts from a grant made under subsection (a) shall be not less than 55 percent of the cost. The non-Federal share of the cost may include, in any amount, public and private funds and in-kind services, and may include, notwithstanding section [603(h)] 603(j), financial assistance, including loans, from a State water pollution control revolving fund.

## FEDERAL WATER POLLUTION CONTROL ACT

[(e) ADMINISTRATIVE REPORTING REQUIREMENTS.—If a project receives grant assistance under subsection (a) and loan assistance from a State water pollution control revolving fund and the loan assistance is for 15 percent or more of the cost of the project, the project may be administered in accordance with State water pollution control revolving fund administrative reporting requirements for the purposes of streamlining such requirements.

[(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$750,000,000 for each of fiscal years 2002 and 2003. Such sums shall remain available until expended.

[(g) ALLOCATION OF FUNDS.—

[(1) FISCAL YEAR 2002.—Subject to subsection (h), the Administrator shall use the amounts appropriated to carry out this section for fiscal year 2002 for making grants to municipalities and municipal entities under subsection (a)(2), in accordance with the criteria set forth in subsection (b).

[(2) FISCAL YEAR 2003.—Subject to subsection (h), the Administrator shall use the amounts appropriated to carry out this section for fiscal year 2003 as follows:

[(A) Not to exceed \$250,000,000 for making grants to municipalities and municipal entities under subsection (a)(2), in accordance with the criteria set forth in subsection (b).

[(B) All remaining amounts for making grants to States under subsection (a)(1), in accordance with a formula to be established by the Administrator, after providing notice and an opportunity for public comment, that allocates to each State a proportional share of such amounts based on the total needs of the State for municipal combined sewer overflow controls and sanitary sewer overflow controls identified in the most recent survey conducted pursuant to section 516(b)(1).]

(e) ADMINISTRATIVE REQUIREMENTS.—

(1) *IN GENERAL.*—*Subject to paragraph (2), a project that receives grant assistance under subsection (a) shall be carried out subject to the same requirements as a project that receives assistance from a State water pollution control revolving fund established pursuant to title VI.*

(2) *DETERMINATION OF GOVERNOR.*—*The requirement described in paragraph (1) shall not apply to a project that receives grant assistance under subsection (a) to the extent that the Governor of the State in which the project is located determines that a requirement described in title VI is inconsistent with the purposes of this section.*

(f) AUTHORIZATION OF APPROPRIATIONS.—*There are authorized to be appropriated to carry out this section, to remain available until expended—*

- (1) \$375,000,000 for fiscal year 2008;
- (2) \$375,000,000 for fiscal year 2009;
- (3) \$375,000,000 for fiscal year 2010;
- (4) \$375,000,000 for fiscal year 2011; and

(5) \$500,000,000 for fiscal year 2012.

(g) **ALLOCATION OF FUNDS.**—

(1) **FISCAL YEAR 2008 AND 2009.**—For each of fiscal years 2008 and 2009, subject to subsection (h), the Administrator shall use the amounts made available to carry out this section to provide grants to municipalities and municipal entities under subsection (a)(2)—

(A) in accordance with the priority criteria described in subsection (b); and

(B) with additional priority given to proposed projects that involve the use of—

(i) nonstructural, low-impact development;

(ii) water conservation, efficiency, or reuse; or

(iii) other decentralized stormwater or wastewater approaches to minimize flows into the sewer systems.

(2) **FISCAL YEAR 2010 AND THEREAFTER.**—For fiscal year 2010 and each fiscal year thereafter, subject to subsection (h), the Administrator shall use the amounts made available to carry out this section to provide grants to States under subsection (a)(1) in accordance with a formula that—

(A) shall be established by the Administrator, after providing notice and an opportunity for public comment; and

(B) allocates to each State a proportional share of the amounts based on the total needs of the State for municipal combined sewer overflow controls and sanitary sewer overflow controls, as identified in the most recent survey—

(i) conducted under section 210; and

(ii) included in a report required under section 516(b)(1)(B).

\* \* \* \* \*

(i) **REPORTS.**—Not later than December 31, [2003] 2010, and periodically thereafter, the Administrator shall transmit to Congress a report containing recommended funding levels for grants under this section. The recommended funding levels shall be sufficient to ensure the continued expeditious implementation of municipal combined sewer overflow and sanitary sewer overflow controls nationwide.

**SEC. 222. TECHNICAL ASSISTANCE FOR RURAL SMALL TREATMENT WORKS AND MEDIUM TREATMENT WORKS.**

(a) **DEFINITIONS.**—In this section:

(1) **DECENTRALIZED WASTEWATER SYSTEM.**—

(A) **IN GENERAL.**—The term “decentralized wastewater system” means a wastewater treatment system that is at or near a site at which wastewater is generated.

(B) **INCLUSIONS.**—The term “decentralized wastewater system” includes a system that provides for—

(i) nonpotable reuse of treated effluent; or

(ii) energy and nutrient recovery from wastewater constituents.

(2) **MEDIUM TREATMENT WORKS.**—The term “medium treatment works” means a publicly owned treatment works serving more than 10,000 but fewer than 100,000 individuals.

(3) **QUALIFIED NONPROFIT TECHNICAL ASSISTANCE PROVIDER.**—*The term “qualified nonprofit technical assistance provider” means a qualified nonprofit technical assistance provider of water and wastewater services to small or medium-sized communities that provides technical assistance (including circuit rider, multi-State regional assistance programs, and training and preliminary engineering evaluations) to owners and operators of small treatment works or medium treatment works that may include State agencies.*

(4) **SMALL TREATMENT WORKS.**—*The term “small treatment works” means a publicly owned treatment works serving not more than 10,000 individuals.*

(b) **GRANT PROGRAM.**—

(1) **IN GENERAL.**—*The Administrator may make grants on a competitive basis to qualified nonprofit technical assistance providers that are qualified to provide assistance on a broad range of wastewater and stormwater approaches—*

(A) *to assist owners and operators of small treatment works and medium treatment works to plan, develop, and obtain financing for eligible projects described in section 603(c) or 518(c);*

(B) *to provide financial assistance, in consultation with the State in which the assistance is provided, to owners and operators of small treatment works and medium treatment works for predevelopment costs (including costs for planning, design, and associated preconstruction activities, such as activities relating directly to the siting of the facility and related elements) associated with stormwater or wastewater infrastructure projects or short-term costs incurred for equipment replacement that is not part of regular operation and maintenance activities for existing stormwater or wastewater systems, if the amount of assistance for any single project does not exceed \$50,000;*

(C) *to provide technical assistance and training for owners and operators of small treatment works and medium treatment works to enable those treatment works and systems to protect water quality and achieve and maintain compliance with this Act; and*

(D) *to disseminate information to owners and operators of small treatment works and medium treatment works, with respect to planning, design, construction, and operation of treatment works, small municipal separate storm sewer systems, and decentralized wastewater treatment systems.*

(2) **DISTRIBUTION OF GRANT.**—*In carrying out this subsection, the Administrator shall ensure, to the maximum extent practicable, that technical assistance provided using funds from a grant under paragraph (1) is made available in each State.*

(3) **CONSULTATION.**—*As a condition of receiving a grant under this subsection, a qualified nonprofit technical assistance provider shall agree to consult with each State in which grant funds are to be expended before the grant funds are expended in the State.*

(4) *ANNUAL REPORT.*—Not later than 60 days after the end of each fiscal year, a qualified nonprofit technical assistance provider that receives a grant under this subsection shall submit to the Administrator a report that—

(A) describes the activities of the qualified nonprofit technical assistance provider using grant funds received under this subsection for the fiscal year; and

(B) specifies—

(i) the number of communities served;

(ii) the sizes of those communities; and

(iii) the type of assistance provided by the qualified nonprofit technical assistance provider.

(c) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to carry out this section—

(1) for grants for small treatment works, \$25,000,000 for each of fiscal years 2009 through 2013; and

(2) for grants for medium treatment works, \$15,000,000 for each of fiscal years 2009 through 2013.

\* \* \* \* \*

## **SEC. 602. CAPITALIZATION GRANT AGREEMENTS.**

(a) *GENERAL RULE.*—\* \* \*

\* \* \* \* \*

(b) *SPECIFIC REQUIREMENTS.*—The Administrator shall enter into an agreement under this section with a State only after the State has established to the satisfaction of the Administrator that—

(1) \* \* \*

\* \* \* \* \*

[(6) treatment works eligible under section 603(c)(1) of this Act which will be constructed in whole or in part before fiscal year 1995 with funds directly made available by capitalization grants under this title and section 205(m) of this Act will meet the requirements of, or otherwise be treated (as determined by the Governor of the State) under sections 201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1), and 513 of this Act in the same manner as treatment works constructed with assistance under title II of this Act;]

(6) *treatment works eligible under section 603(c) that are constructed, in whole or in part, using funds made available by a State loan fund under this title shall meet the requirements of section 513 in the same manner as treatment works constructed using assistance provided under title II;*

(c) *GUIDANCE FOR SMALL SYSTEMS.*—

(1) *DEFINITION OF SMALL SYSTEM.*—In this subsection, the term “small system” means a system—

(A) for which a municipality or intermunicipal, interstate, or State agency seeks assistance under this title; and

(B) that serves a population of not more than 10,000 individuals.

(2) *SIMPLIFIED PROCEDURES.*—Not later than 1 year after the date of enactment of this subsection, the Administrator shall as-



*sist the States in establishing simplified procedures for small systems to obtain assistance under this title.*

(3) *PUBLICATION OF MANUAL.*—Not later than 1 year after the date of enactment of this subsection, after providing notice and opportunity for public comment, the Administrator shall publish—

(A) *a manual to assist small systems in obtaining assistance under this title; and*

(B) *in the Federal Register, notice of the availability of the manual.*

\* \* \* \* \*

#### **SEC. 603. WATER POLLUTION CONTROL REVOLVING LOAN FUNDS.**

(a) **REQUIREMENTS FOR OBLIGATION OF GRANT FUNDS.**—Before a State may receive a capitalization grant with funds made available under this title and section 205(m) of this Act, the State shall first establish a water pollution control revolving fund which complies with the requirements of this section.

(b) **ADMINISTRATOR.**—Each State water pollution control revolving fund shall be administered by an instrumentality of the State with such powers and limitations as may be required to operate such fund in accordance with the requirements and objectives of this Act.

[(c) **PROJECTS ELIGIBLE FOR ASSISTANCE.**—The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212 of this Act), (2) for the implementation of a management program established under section 319 of this Act, and (3) for development and implementation of a conservation and management plan under section 320 of this Act. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing such financial assistance.]

(c) **PROJECTS ELIGIBLE FOR ASSISTANCE.**—Funds in each State water pollution control revolving fund shall be used only by a municipality or an intermunicipal, interstate, or State agency (or, for the purpose of paragraph (1), by either of those entities or a private treatment works or decentralized wastewater system that principally treats municipal wastewater or domestic sewage)—

(1) *to provide financial assistance for construction activities (such as expansion to meet needs of existing development), including planning design, and associated preconstruction planning activities (as defined in section 212)—*

(A) *to implement a management program established under section 319; and*

(B) *to develop and implement a conservation and management plan under section 320;*

(2) *to increase the security of wastewater treatment works (excluding any expenditure for operations or maintenance);*

(3) *to implement measures to control, manage, reduce, treat, infiltrate, or reuse municipal stormwater, the primary purpose of which is the protection, preservation, or enhancement of water quality to support public purposes, including procure-*

*ment and use of equipment to support minimum measures such as street sweeping and storm drain system cleaning;*

*(4) to carry out water conservation or efficiency projects, the primary purpose of which is the protection, preservation, or enhancement of water quality to support public purposes;*

*(5) to implement measures to integrate water resource management planning and implementation;*

*(6) to carry out water and wastewater reuse, reclamation, and recycling projects, the primary purpose of which is the protection, preservation, or enhancement of water quality to support public purposes; and*

*(7) for capital costs associated with monitoring equipment for combined or sanitary sewer overflows.*

(d) TYPES OF ASSISTANCE.—Except as otherwise limited by State law, a water pollution control revolving fund of a State under this section may be used only—

(1) to make loans, on the condition that—

(A) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed **[20 years]** *the lesser of 30 years or the design life of the project to be financed with the proceeds of the loan;*

(B) annual principal and interest payments will commence not later than 1 year after completion of any project and all loans will be fully amortized not later than 20 years after project completion;

(C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans; and

(D) the fund will be credited with all payments of principal and interest on all loans;

(2) to buy or refinance the debt obligation of municipalities and intermunicipal and interstate agencies within the State at or below market rates, where such debt obligations were incurred after March 7, 1985;

(3) to guarantee, or purchase insurance for, local obligations where such action would improve credit market access or reduce interest rates;

(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of such bonds will be deposited in the fund;

(5) to provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;

(6) to earn interest on fund accounts; **[and]**

(7) for the reasonable costs of administering the fund and conducting activities under this **[title, except that such amounts shall not exceed 4 percent of all grant awards to such fund under this title.] title, except that—**

*(A) such amounts shall not exceed 6 percent of all grant awards to the fund under this title; and*

*(B) if there is no appropriation for a fiscal year, the total amount of the reasonable cost of administering the fund and conducting activities under this title shall not exceed 6 percent of all grant loan awards made by the State for that fiscal year; and*

(8) as a source of revenue (restricted solely to interest earnings of the fund) or security for payment of the principal and interest on revenue or general obligation bonds issued by the State to provide matching funds under section 602(b)(2), if the proceeds of the sale of the bonds will be deposited in the fund.

(e) **ADDITIONAL ASSISTANCE FOR DISADVANTAGED COMMUNITIES.**—

(1) **DEFINITION OF DISADVANTAGED COMMUNITY.**—In this subsection, the term “disadvantaged community” means a community with a service area, or portion of a service area, of a treatment works that meets affordability criteria established after public review and comment by the State in which the treatment works is located.

(2) **LOAN SUBSIDY.**—Notwithstanding any other provision of this section, in a case in which the State makes a loan from the water pollution control revolving loan fund in accordance with subsection (c) to a disadvantaged community or a community that the State expects to become a disadvantaged community as the result of a proposed project, the State may provide additional subsidization, including—

(A) the forgiveness of all or a portion of the principal of the loan; and

(B) a negative interest rate on the loan.

(3) **TOTAL AMOUNT OF SUBSIDIES.**—For each fiscal year, the total amount of loan subsidies made by the State pursuant to this subsection may not exceed 30 percent of the amount of the capitalization grant received by the State for the fiscal year.

(4) **INFORMATION.**—The Administrator may publish information to assist States in establishing affordability criteria described in paragraph (1).

(f) **COST-SAVING WATER TREATMENT AND EFFICIENCY IMPROVEMENTS.**—Subject to subsection (e)(3), in providing a loan for a project under this section, a State may forgive repayment of such portion of the loan amount, not to exceed 5 percent, as is equal to the percentage of the project that is devoted to alternative approaches to wastewater and stormwater controls (including non-structural methods) such as projects that treat or minimize sewage or urban stormwater discharges using—

(1) decentralized or distributed stormwater controls;

(2) decentralized wastewater treatment;

(3) low-impact development technologies and nonstructural approaches;

(4) stream buffers;

(5) wetland restoration and enhancement;

(6) actions to minimize the quantity of and direct connections to impervious surfaces;

(7) soil and vegetation, or other permeable materials;

(8) actions that increase efficient water use, water conservation, or water reuse.

[(e)] (g) **LIMITATION TO PREVENT DOUBLE BENEFITS.**—If a State makes, from its water pollution revolving fund, a loan which will finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works, the State shall ensure that if the recipient

of such loan receives a grant under section 201(g) of this Act for construction of such treatment works and an allowance under section 201(l)(1) of this Act for non-federal funds expended for such planning and preparation, such recipient will promptly repay such loan to the extent of such allowance.

[(f)] (h) **CONSISTENCY WITH PLANNING REQUIREMENTS.**—A State may provide financial assistance from its water pollution control revolving fund only with respect to a project which is consistent with plans, if any, developed under sections 205(j), 208, 303(e), 319, and 320 of this Act.

[(g)] (g) **PRIORITY LIST REQUIREMENT.**—The State may provide financial assistance from its water pollution control revolving fund only with respect to a project for construction of a treatment works described in subsection (c)(1) if such project is on the State's priority list under section 216 of this Act. Such assistance may be provided regardless of the rank of such project on such list.]

(i) **PRIORITY SYSTEM REQUIREMENT.**—

(1) **DEFINITIONS.**—*In this subsection:*

(A) **RESTRUCTURING.**—*The term “restructuring” means—*

(i) *the consolidation of management functions or ownership with another facility; or*

(ii) *the formation of cooperative partnerships.*

(B) **TRADITIONAL WASTEWATER APPROACH.**—*The term “traditional wastewater approach” means a managed system used to collect and treat wastewater from an entire service area consisting of—*

(i) *collection sewers;*

(ii) *a centralized treatment plant using biological, physical, or chemical treatment processes; and*

(iii) *a direct point source discharge to surface water.*

(2) **PRIORITY SYSTEM.**—*In providing financial assistance from the water pollution control revolving fund of the State, the State shall establish a priority system that—*

(A) *gives greater weight to an application for assistance by the owner or operator of a treatment works if the application includes—*

(i) *an inventory of assets, including a description of the condition of those assets;*

(ii) *a schedule for replacement of the assets;*

(iii) *a financing plan that factors in all lifecycle costs indicating sources of revenue from ratepayers, grants, bonds, other loans, and other sources to meet the costs;*

(iv) *a review of options for restructuring the treatment works; or*

(v) *approaches other than a traditional wastewater approach that treat or minimize sewage or urban stormwater discharges using—*

(I) *decentralized or distributed stormwater controls;*

(II) *decentralized wastewater treatment;*

(III) *low-impact development technologies and nonstructural approaches;*

(IV) *stream buffers;*

(V) *wetland restoration and enhancement;*

(VI) actions to minimize the quantity of and direct connections to impervious surfaces;

(VII) soil and vegetation, or other permeable materials; or

(VIII) actions that increase efficient water use, water conservation, or water reuse;

(vi) a demonstration of consistency with State, regional, and municipal watershed plans, water conservation and efficiency plans, or integrated water resource management plans;

(vii) a proposal by the applicant demonstrating flexibility through alternative means to carry out responsibilities under Federal regulations, that may include watershed permitting and other innovative management approaches, while achieving results that—

(I) the State, in the case of a permit program approved under section 402, determines will meet permit requirements; or

(II) the Administrator determines are measurably superior when compared to regulatory standards;

(B) takes into consideration appropriate chemical, physical, and biological data relating to water quality that the State considers reasonably available and of sufficient quality;

(C) provides for public notice and opportunity to comment on the establishment of the priority system and the summary under subparagraph (D);

(D) provides for the publication, not less than biennially in summary form, of a description of projects in the State that are eligible for assistance under this title that indicates—

(i) the priority assigned to each project under the priority system of the State; and

(ii) the funding schedule for each project, to that extent the information is available; and

(E) ensures that projects undertaken with assistance under this title are designed to achieve, as determined by the State, the optimum water quality management, consistent with the public health and water quality goals and requirements of this Act.

**[(h)]** (j) **ELIGIBILITY OF NON-FEDERAL SHARE OF CONSTRUCTION GRANT PROJECTS.**—A State water pollution control revolving fund may provide assistance (other than under subsection (d)(1) of this section) to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a treatment works project for which such municipality or agency is receiving assistance from the Administrator under any other authority only if such assistance is necessary to allow such project to proceed.

(k) **TRANSFER OF FUNDS.**—

(1) **IN GENERAL.**—The Governor of a State may—

(A)(i) reserve not more than 33 percent of a capitalization grant made under this title; and

(ii) add the funds reserved to any funds provided to the State under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12); and

(B)(i) reserve for any year an amount that does not exceed the amount that may be reserved under subparagraph (A) for that year from capitalization grants made under section 1452 of that Act (42 U.S.C. 300j-12); and

(ii) add the reserved funds to any funds provided to the State under this title.

(2) *STATE MATCH.*—Funds reserved under this subsection shall not be considered to be a State contribution for a capitalization grant required under this title or section 1452(b) of the Safe Drinking Water Act (42 U.S.C. 300j-12(b)).

(l) *NONCOMPLIANCE.*—

(1) *IN GENERAL.*—Except as provided in paragraph (2), no assistance (other than assistance that is to be used by a treatment works solely for planning, design, or security purposes) shall be provided under this title to the owner or operator of a treatment works that has been in significant noncompliance with any requirement of this Act for any of the 4 quarters during the preceding 8 quarters, unless the treatment works is in compliance with an enforceable administrative order to effect compliance with the requirement.

(2) *EXCEPTION.*—An owner or operator of a treatment works that is determined under paragraph (1) to be in significant noncompliance with a requirement described in that paragraph may receive assistance under this title if the Administrator and the State providing the assistance determine that—

(A) the entity conducting the enforcement action on which the determination of significant noncompliance is based has determined that the use of assistance would enable the owner or operator of the treatment works to take corrective action toward resolving the violations; or

(B) the entity conducting the enforcement action on which the determination of significant noncompliance is based has determined that the assistance would be used by the owner or operator of the treatment works in order to assist owners and operators in making progress towards compliance.

(m) *NEGOTIATION OF CONTRACTS.*—

(1) *IN GENERAL.*—A contract to be carried out using funds directly made available by a capitalization grant under this section for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural or related services shall be negotiated in the same manner as—

(A) a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code; or

(B) an equivalent State qualifications-based requirement (as determined by the Governor of the State).

(2) *EXEMPTION FOR SMALL COMMUNITIES.*—Paragraph (1) shall not apply to a contract described in that paragraph for program management, construction management, feasibility

*studies, preliminary engineering, design, engineering, surveying, mapping, or architectural or related services for a community of 10,000 or fewer individuals.*

\* \* \* \* \*

**SEC. 604. ALLOTMENT OF FUNDS.**

(a) **FORMULA.**—Sums authorized to be appropriated to carry out this section for each of fiscal years 1989 and 1990 shall be allotted by the Administrator in accordance with section 205(c) of this Act.

[(b) **RESERVATION OF FUNDS FOR PLANNING.**—Each State shall reserve each fiscal year 1 percent of the sums allotted to such State under this section for such fiscal year, or \$100,000, whichever amount is greater, to carry out planning under sections 205(j) and 303(e) of this Act.]

(b) **RESERVATION OF FUNDS.**—

(1) **PLANNING.**—*Each State may reserve for each fiscal year the greater of 2 percent of the sums allotted to the State under this section for the fiscal year, or \$100,000, to carry out planning under sections 205(j) and 303(e).*

(2) **INDIAN TRIBES.**—*Of the total amount of funds made available under paragraph (1), 1.5 percent shall be allocated to Indian tribes (as defined in section 518(h)).*

\* \* \* \* \*

**[SEC. 607. AUTHORIZATION OF APPROPRIATIONS.]**

There is authorized to be appropriated to carry out the purposes of this title the following sums:

[(1) \$1,200,000,000 per fiscal year for each of fiscal year 1989 and 1990;

[(2) \$2,400,000,000 for fiscal year 1991;

[(3) \$1,800,000,000 for fiscal year 1992;

[(4) \$1,200,000,000 for fiscal year 1993; and

[(5) \$600,000,000 for fiscal year 1994.]]

**SEC. 607. AUTHORIZATION OF APPROPRIATIONS.**

(a) **IN GENERAL.**—*There are authorized to be appropriated to carry out this title—*

(1) *\$3,200,000,000 for each of fiscal years 2008 and 2009;*

(2) *\$3,600,000,000 for fiscal year 2010;*

(3) *\$4,000,000,000 for fiscal year 2011; and*

(4) *\$6,000,000,000 for fiscal year 2012.*

(b) **AVAILABILITY.**—*Amounts made available under this section shall remain available until expended.*

(c) **RESERVATION FOR NEEDS SURVEYS.**—*Of the amount made available under subsection (a) to carry out this title for a fiscal year, the Administrator may reserve not more than \$1,000,000 for the fiscal year, to remain available until expended, to pay the costs of conducting needs surveys under section 516(b)(1)(B).*

**SAFETY OF PUBLIC WATER SYSTEMS (SAFE DRINKING WATER ACT)**

\* \* \* \* \*

**SEC. 1434. CONTAMINANT PREVENTION, DETECTION AND RESPONSE.**

(a) IN GENERAL.—\* \* \*

\* \* \* \* \*

**[(b) Funding.]**—For the authorization of appropriations to carry out this section, see section 1435(e).**]***(b) REPORT.*—Not later than 180 days after the date of enactment of the Water Infrastructure Financing Act, the Administrator shall submit to Congress a report that includes—*(1) a description of the progress made as of that date in implementing this section; and**(2) a description of any impediments to that implementation identified by the Administrator, including—**(A) difficulty in coordinating the implementation with other Federal, State, or local agencies or organizations;**(B) insufficient funding for effective implementation;**(C) a lack of authorization to take certain actions (including the authority to hire necessary personnel) required to carry out the implementation; and**(D) technological impediments to developing the methods, means, and equipment specified in subsection (a)(1).**(c) IMPLEMENTATION PLAN.*—The Administrator shall develop and carry out an implementation plan for this section consistent with actions taken to date and incorporating the results of the report under subsection (b).*(d) FUNDING.*—There is authorized to be appropriated to carry out this section \$7,500,000 for each of fiscal years 2008 through 2012.

\* \* \* \* \*

**SEC. 1442. (a)(1)** The Administrator may conduct research, studies, and demonstrations relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments of man resulting directly or indirectly from contaminants in water, or to the provision of a dependably safe supply of drinking water, including—**(A)** improved methods (i) to identify and measure the existence of contaminants in drinking water (including methods which may be used by State and local health and water officials), and (ii) to identify the source of such contaminants;**(B)** \* \* \*

\* \* \* \* \*

**(e) TECHNICAL ASSISTANCE.**—**[(The Administrator may provide]***(1) PUBLIC WATER SYSTEMS.*—The Administrator may provide technical assistance to small public water systems to enable such systems to achieve and maintain compliance with applicable national primary drinking water regulations. **[(Such assistance]***(2) TYPES OF ASSISTANCE.*—Such assistance may include circuit-rider and multi-State regional technical assistance programs, training, and preliminary engineering evaluations. **[(The Administrator shall ensure]***(3) AVAILABILITY.*—The Administrator shall ensure that technical assistance pursuant to this subsection is available in each State. **[(Each nonprofit]**



(4) *REQUIREMENT APPLICABLE TO NONPROFIT ORGANIZATIONS.*—Each nonprofit organization receiving assistance under this subsection shall consult with the State in which the assistance is to be expended or otherwise made available before using assistance to undertake activities to carry out this subsection. [There are authorized to be appropriated to the Administrator to be used for such technical assistance \$15,000,000 for each of the fiscal years 1997 through 2003. No portion of any State loan fund established under section 1452 (relating to State loan funds) and no portion of any funds made available under this subsection may be used for lobbying expenses. Of the total amount appropriated under this subsection, 3 percent shall be used for technical assistance to public water systems owned or operated by Indian Tribes.]

(5) *PRIORITY.*—In providing grants under this section, the Administrator shall give priority to small systems organizations that, as determined by the Administrator, are qualified and will be the most effective at assisting those small systems that have the greatest need (or a majority of need) in the States.

(6) *WELLS AND WELL SYSTEMS.*—

(A) *IN GENERAL.*—The Administrator shall provide grants to nonprofit organizations to provide technical assistance to communities and individuals regarding the design, operation, construction, and maintenance of household wells and small shared well-systems that provide drinking water.

(B) *FORM OF ASSISTANCE.*—Technical assistance referred to in subparagraph (A) may include—

- (i) training and education;
- (ii) operation of a hotline; and
- (iii) the conduct of other activities relating to the design and construction of household, shared, and small water well systems in rural areas.

(C) *PRIORITY.*—Subject to paragraph (5), in providing grants under this section, the Administrator shall give priority to applicants that, as determined by the Administrator—

- (i) are qualified; and
- (ii) have demonstrated experience in providing similar technical assistance and in developing similar projects.

(D) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated to carry out this paragraph \$7,500,000 for each of fiscal years 2009 through 2013.

(7) *FUNDING.*—

(A) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated to the Administrator to carry out this subsection (other than paragraph (6)) \$35,000,000 for each of fiscal years 2009 through 2013.

(B) *LOBBYING EXPENSES.*—No portion of any State loan fund established under section 1452 and no portion of any funds made available under this subsection may be used for lobbying expenses.

(C) *INDIAN TRIBES.*—Of the total amount made available under this section for each fiscal year, 3 percent shall be used for technical assistance to public water systems owned or operated by Indian Tribes.

\* \* \* \*

SEC. 1450. (a)(1) The Administrator is authorized to prescribe such regulations as are necessary or appropriate to carry out his functions under this title.

(2) \* \* \*

\* \* \* \*

[(e) The Administrator shall take such action as may be necessary to assure compliance with provisions of the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a–276a(5)). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).]

(e) *LABOR STANDARDS.*—

(1) *IN GENERAL.*—The Administrator shall take such action as the Administrator determines to be necessary to ensure that each laborer and mechanic employed by a contractor or subcontractor of a construction project financed, in whole or in part, by a grant, loan, loan guarantee, refinancing, or any other form of financial assistance provided under this Act (including assistance provided by a State loan fund established under section 1452) is paid wages at a rate of not less than the wages prevailing for the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

(2) *AUTHORITY OF SECRETARY OF LABOR.*—With respect to the labor standards specified in this subsection, the Secretary of Labor shall have the authority and functions established in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40, United States Code.

\* \* \* \*

SEC. 1452. (a) *GENERAL AUTHORITY.*—

(1) *GRANTS TO STATES TO ESTABLISH STATE LOAN FUNDS.*—

(A) *IN GENERAL.*—\* \* \*

\* \* \* \*

(2) *USE OF FUNDS.*—

(A) Except as otherwise authorized by this title, amounts deposited in a State loan fund, including loan repayments and interest earned on such amounts, shall be used only for providing loans or loan guarantees, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in a State loan fund established under paragraph (1), or other financial assistance authorized under this section to community water systems and non-profit noncommunity water systems, other than systems owned by Federal agencies.

(B) Financial assistance under this section may be used by a public water system only for expenditures **[(not)]** *(including expenditures for planning, design, and associated preconstruction activities, including activities relating to the siting of the facility, but not including monitoring, operation, and maintenance expenditures)* of a type or category which the Administrator has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under section 1412 or otherwise significantly further the health protection objectives of this title *or to replace or rehabilitate aging treatment, storage (including reservoirs), or distribution facilities of public water systems or provide for capital projects to upgrade the security of public water systems.*

(C) **SALE OF BONDS.**—*Funds may also be used by a public water system to increase security at the public water system (excluding any expenditure for operations and maintenance), or as a source of revenue (restricted solely to interest earnings of the applicable State loan fund) or security for payment of the principal and interest on revenue or general obligation bonds issued by the State to provide matching funds under subsection (e), if the proceeds of the sale of the bonds will be deposited in the State loan fund.*

(D) The funds may also be used to provide loans to a system referred to in section 1401(4)(B) for the purpose of providing the treatment described in section 1401(4)(B)(i)(III).

(E) The funds shall not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized by this paragraph and the purchase is from a willing seller.

(F) Of the amount credited to any State loan fund established under this section in any fiscal year, 15 percent shall be available solely for providing loan assistance to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects of public water systems.

\* \* \* \* \*

(b) **INTENDED USE PLANS.**—

(1) **IN GENERAL.**—After providing for public review and comment, each State that has entered into a capitalization agreement pursuant to this section shall annually prepare a plan that identifies the intended uses of the amounts available to the State loan fund of the State.

(2) **CONTENTS.**—\* \* \*

\* \* \* \* \*

(3) **USE OF FUNDS.**—

**[(A)]** **IN GENERAL.**—An intended use plan shall provide, to the maximum extent practicable, that priority for the use of funds be given to projects that—

**[(i)]** address the most serious risk to human health;

[(ii) are necessary to ensure compliance with the requirements of this title (including requirements for filtration); and

[(iii) assist systems most in need on a per household basis according to State affordability criteria.]

(A) *DEFINITION OF RESTRUCTURING.*—*In this paragraph, the term “restructuring” means changes in operations (including ownership, cooperative partnerships, asset management, consolidation, and alternative water supply).*

(B) *PRIORITY SYSTEM.*—*An intended use plan shall provide, to the maximum extent practicable, that priority for the use of funds be given to projects that—*

*(i) address the most serious risk to human health;*

*(ii) are necessary to ensure compliance with this title (including requirements for filtration); and*

*(iii) assist systems most in need on a per-household basis according to State affordability criteria.*

(C) *WEIGHT GIVEN TO APPLICATIONS.*—*After determining project priorities under subparagraph (B), an intended use plan shall further provide that the State shall give greater weight to an application for assistance by a community water system if the application includes such information as the State determines to be necessary, including—*

*(i) an inventory of assets, including a description of the condition of the assets;*

*(ii) a schedule for replacement of assets;*

*(iii) a financing plan that factors in all life-cycle costs indicating sources of revenue from ratepayers, grants, bonds, other loans, and other sources to meet the costs;*

*(iv) a review of options for restructuring the public water system;*

*(v) demonstration of consistency with State, regional, and municipal watershed plans; and*

*(vi) a water conservation plan consistent with guidelines developed for those plans by the Administrator under section 1455(a).*

[(B)] (D) *LIST OF PROJECTS.*—Each State shall, after notice and opportunity for public comment, publish and [periodically] *at least biennially* update a list of projects in the State that are eligible for assistance under this section, including the priority assigned to each project and, to the extent known, the expected funding schedule for each project.

\* \* \* \* \*

(d) *ASSISTANCE FOR DISADVANTAGED COMMUNITIES.*—

(1) *LOAN SUBSIDY.*—Notwithstanding any other provision of this section, in any case in which the State makes a loan pursuant to subsection (a)(2) to a disadvantaged community or to a community that the State expects to become a disadvantaged community as the result of a proposed project, the State may provide additional subsidization (including forgiveness of principal).

(2) TOTAL AMOUNT OF SUBSIDIES.—For each fiscal year, the total amount of loan subsidies made by a State pursuant to paragraph (1) may not exceed 30 percent of the amount of the capitalization grant received by the State for the year.

(3) DEFINITION OF DISADVANTAGED COMMUNITY.—In this subsection, the term “disadvantaged community” means the service area, *or portion of a service area*, of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located. The Administrator may publish information to assist States in establishing affordability criteria.

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(g) ADMINISTRATION OF STATE LOAN FUNDS.—

(1) COMBINED FINANCIAL ADMINISTRATION.—\* \* \*

\* \* \* \* \*

(2) COST OF ADMINISTERING FUND.—Each State may annually use up to [4] 6 percent of the funds allotted to the State under this section to cover the reasonable costs of administration of the programs under this section, including the recovery of reasonable costs expended to establish a State loan fund which are incurred after the date of enactment of this section, and to provide technical assistance to public water systems within the State. For fiscal year 1995 and each fiscal year thereafter, each State may use up to an additional 10 percent of the funds allotted to the State under this section—

(A) for public water system supervision programs under section 1443(a);

(B) to administer or provide technical assistance through source water protection programs;

(C) to develop and implement a capacity development strategy under section 1420(c); and

(D) for an operator certification program for purposes of meeting the requirements of section [1419, if the State matches the expenditures with at least an equal amount of State funds. At least half of the match must be additional to the amount expended by the State for public water supervision in fiscal year 1993.] 1419. An additional 2 percent of the funds annually allotted to each State under this section may be used by the State to provide technical assistance to public water systems serving 10,000 or fewer persons in the State. Funds utilized under subparagraph (B) shall not be used for enforcement actions.

(3) GUIDANCE AND REGULATIONS.—The Administrator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section, including—

(A) provisions to ensure that each State commits and expends funds allotted to the State under this section as efficiently as possible in accordance with this title and applicable State laws;

(B) guidance to prevent waste, fraud, and abuse; and

(C) guidance to avoid the use of funds made available under this section to finance the expansion of any public water system in anticipation of future population growth.

The guidance and regulations shall also ensure that the States, and public water systems receiving assistance under this section, use accounting, audit, and fiscal procedures that conform to generally accepted accounting standards.

(4) STATE REPORT.—Each State administering a loan fund and assistance program under this subsection shall publish and submit to the Administrator a report every 2 years on its activities under this section, including the findings of the most recent audit of the fund and the entire State allotment. The Administrator shall periodically audit all State loan funds established by, and all other amounts allotted to, the States pursuant to this section in accordance with procedures established by the Comptroller General.

(5) TRANSFER OF FUNDS.—

(A) IN GENERAL.—*The Governor of a State may—*

*(i)(I) reserve not more than 33 percent of a capitalization grant made under this section; and*

*(II) add the funds reserved to any funds provided to the State under section 601 of the Federal Water Pollution Control Act (33 U.S.C. 1381); and*

*(ii)(I) reserve for any fiscal year an amount that does not exceed the amount that may be reserved under clause (i)(I) for that year from capitalization grants made under section 601 of that Act (33 U.S.C. 1381); and*

*(II) add the reserved funds to any funds provided to the State under this section.*

(B) STATE MATCH.—*Funds reserved under this paragraph shall not be considered to be a State match of a capitalization grant required under this section or section 602(b) of the Federal Water Pollution Control Act (33 U.S.C. 1382(b)).*

\* \* \* \* \*

(k) OTHER AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—Notwithstanding subsection (a)(2), a State may take each of the following actions:

(A) \* \* \*

\* \* \* \* \*

(2) LIMITATION.—For each fiscal year, the total amount of assistance provided and expenditures made by a State under this subsection may not exceed 15 percent of the amount of the capitalization grant received by the State for that year and may not exceed 10 percent of that amount for any one of the following activities:

(A) To acquire land or conservation easements pursuant to paragraph (1)(A)(i).

(B) To provide funding to implement voluntary, incentive-based source water quality protection measures pursuant to clauses (ii) and (iii) of paragraph (1)(A).

(C) To provide assistance through a capacity development strategy pursuant to paragraph (1)(B).

(D) To make expenditures to delineate or assess source water protection areas pursuant to paragraph (1)(C) (*including implementation of source water protection plans*).

\* \* \* \* \*

[(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the purposes of this section \$599,000,000 for the fiscal year 1994 and \$1,000,000,000 for each of the fiscal years 1995 through 2003. To the extent amounts authorized to be appropriated under this subsection in any fiscal year are not appropriated in that fiscal year, such amounts are authorized to be appropriated in a subsequent fiscal year (prior to the fiscal year 2004). Such sums shall remain available until expended.]

(m) AUTHORIZATION OF APPROPRIATIONS.—

(1) *IN GENERAL.*—*There are authorized to be appropriated to carry out this section—*

(A) \$1,500,000,000 for fiscal year 2008;

(B) \$2,000,000,000 for each of fiscal years 2009 and 2010;

(C) \$3,500,000,000 for fiscal year 2011; and

(D) \$6,000,000,000 for fiscal year 2012.

(2) *AVAILABILITY.*—*Amounts made available under this subsection shall remain available until expended.*

(3) *RESERVATION FOR NEEDS SURVEYS.*—*Of the amount made available under paragraph (1) to carry out this section for a fiscal year, the Administrator may reserve not more than \$1,000,000 per year to pay the costs of conducting needs surveys under subsection (h).*

\* \* \* \* \*

(s) *NEGOTIATION OF CONTRACTS.*—

(1) *IN GENERAL.*—*A contract to be carried out using funds directly made available by a capitalization grant under this section for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural or related services shall be negotiated in the same manner as—*

(A) *a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code; or*

(B) *an equivalent State qualifications-based requirement (as determined by the Governor of the State).*

(2) *EXEMPTION FOR SMALL COMMUNITIES.*—*Paragraph (1) shall not apply to a contract described in that paragraph for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural or related services for a community of 10,000 or fewer individuals.*

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